

176. We also observe that the Office of Management and Budget ("OMB") recently modified its standards for the classification of federal data on race and ethnicity.<sup>485</sup> Specifically, OMB: (1) separated the category for Asian and Pacific Islander category into two categories -- "Asian" and "Native Hawaiian or Other Pacific Islander"; and (2) changed the term "Hispanic" to "Hispanic or Latino". We previously have used this standard to define the term "minority" for purposes of our designated entity provisions,<sup>486</sup> and seek comment on whether we should similarly amend the current definition in our rules.<sup>487</sup>

**b. Gender-based designated entity provisions**

177. We seek comment on whether special policies are warranted for female-owned applicants. We note that the constitutionality of our former practice of awarding comparative preferences for female ownership was not addressed by the Supreme Court in *Metro*<sup>488</sup> and that we suspended that practice following *Lamprecht v. FCC*, 958 F.2d 382 (D.C. Cir. 1992), which held, under "intermediate" scrutiny, that our gender preference was not shown to be substantially related to achieving program diversity and that it was thus unconstitutional. More recently, the Supreme Court has ruled that a state program, which makes distinctions based upon gender, must be supported by an "exceedingly persuasive justification" in order to withstand constitutional muster. *United States v. Virginia Military Institute*, 116 S.Ct 2264, 2274-76 (1996). We seek comment on whether there is sufficient evidence to justify special provisions for women-owned businesses under that standard.

178. As with minority-based provisions, we tentatively conclude that to the extent consistent with applicable constitutional standards, we should take steps to further our statutory goal of making certain that women have the opportunity to provide spectrum-based services pursuant to Section 309(j)(4). We seek comment on how we can modify our designated entity provisions, consistent with the standards set forth in recent court decisions. In particular, we seek comment on what tools, such as bidding credits, might be used consistent with judicial precedent. In addition, we seek comment on whether we should limit

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<sup>485</sup> See Office of Management and Budget, Revisions to the Standards for the Classification of Federal Data on Race Ethnicity, *Notice of Decision*, 62 Fed Reg 58782 (October 30, 1997).

<sup>486</sup> See *Competitive Bidding Fifth Memorandum Opinion and Order*, 10 FCC Rcd at 432 ¶ 52 (1994) (revising 47 C.F.R. § 24.720(i) to conform with the definition of "minority" found at, *inter alia*, 47 U.S.C. § 309(i)(3)(c)(ii) and 47 C.F.R. § 1.1621(b)). See also *Broadcast Equal Employment Opportunity Rules and FCC Form 395*, 70 FCC 2d 1466, 1473 (1979); Race and Ethnic Standards for Federal Statistics and Administration Reporting, OMB Statistical Policy Directive No. 15 (1977).

<sup>487</sup> 47 C.F.R. § 1.2110(b)(2).

<sup>488</sup> *Metro Broadcasting Inc. v. FCC*, 497 U.S. 547 (1990) (applying an intermediate scrutiny standard, the Supreme Court upheld the constitutionality of our treatment of minority ownership policies in comparative proceedings).

any tools designed to encourage participation in our auction program by women-owned businesses that also qualify as small businesses. Commenters advocating the adoption of such measures at this time should address the constitutional issue and present specific empirical evidence supporting their views.

**c. Rural Telephone Company provisions**

179. In the Commission's recent report to Congress on the spectrum auctions, we stated our belief that auctions have generally provided rural telephone companies with favorable opportunities.<sup>489</sup> We observed that, to date, rural telephone companies have won about 44 percent of the 123 rural Basic Trading Areas (BTA) licenses in the United States and we noted some examples of rural telephone companies' successes in offering broadband PCS.<sup>490</sup> In keeping with our duties under the Act, however, we seek comment on whether there are mechanisms that might further opportunities for rural telephone companies to provide spectrum based services.

**2. Installment Payments**

180. Background. We are required by statute to provide incentives to ensure participation by small businesses and other "designated entities" when implementing our authority to conduct auctions, as set forth in Section 309(j) of the Communications Act.<sup>491</sup> Among other methods, allowing winning bidders to pay for their licenses using installment plans has been one method we have used to encourage small business involvement in the wireless marketplace. As discussed in Section III.B.5, *supra*, in this *Third Report and Order* we suspend the use of installment payments for the foreseeable future. In lieu of installment payments, we have adopted a schedule of bidding credits applicable to small businesses that is higher than that which we originally proposed.<sup>492</sup>

181. Discussion. We observed in the *Notice* in this docket that small businesses have been successful in the auctions in which installment payments plans were offered.<sup>493</sup> We therefore seek comment on ways in which the Commission can provide an effective installment payment program while at the same time minimizing the concerns (*e.g.*, licensee default or difficulty meeting financial obligations to the Commission) that have led to our

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<sup>489</sup> The FCC Report to Congress on Spectrum Auctions, WT Docket 97-150, at p. 25 (rel. Oct. 9, 1997).

<sup>490</sup> *Id.* at 25-26.

<sup>491</sup> 47 U.S.C. §§ 309(j)(4)(A), (D).

<sup>492</sup> See Section III.B.5., *supra*. See also, *Notice* at ¶ 32.

<sup>493</sup> *Notice* at ¶ 34.

decision to suspend the use of installment payments for the present time. We seek comment, for example, on how the Commission can create an installment payment plan which fulfills our sometimes incongruent goals of encouraging only serious, financially qualified small business applicants to apply for licenses, ensuring the rapid provision of service to the public, and guaranteeing that the American public is reasonably compensated for the use of the spectrum being auctioned. We also seek comment on how the Commission might fashion an installment payment program that is consistent with the provision of the Balanced Budget Act that requires that all proceeds from certain future auctions be deposited in the United States Treasury not later than September 30, 2002. In this regard, we note that under most of the installment payment plans previously offered by the Commission, winning bidders have been permitted to pay for their licenses over the entire 10 year license term.<sup>494</sup> If we were to make installment plans available in the future, we interpret this legislation as requiring that all payments of principal and interest for covered auctions be deposited in the United States Treasury by the statutory deadline for collection, which is approximately five years away. Finally, we seek comment on means other than bidding credits and installment payments by which the Commission might facilitate the participation of small businesses and other designated entities in our spectrum auction program. Commenters should provide sufficient detail to assist the Commission in fashioning a program based upon their comments.

182. We also note that under our current rules, winning bidders that are designated entities are not required to pay their second down payment until petitions to deny filed against them are dismissed or denied. In the interim, designated entity winning bidders for the same auction with no petitions filed against them are required to submit their second down payments earlier because their licenses are ready for grant. Because Section 1.2110(e)(3)(i) of our rules provides that interest rates on installment payments will be based on the rate of U.S. Treasury obligations at the time of licensing, in previous auctions this has had the result of establishing different rates of interest on installment payments for winning bidders in the same auction.<sup>495</sup> In the event we reinstate installment payments in the future, we seek comment on whether we should establish the interest rate based upon the rate of U.S. Treasury obligations on the date of the close of the auction. We also seek comment on one aspect of our rules relating to the calculation of the total default payment owed where a winning bidder defaults on multiple licenses.

### 3. Attribution of Gross Revenues of Investors and Affiliates

183. Background. In the *Notice*, we proposed to adopt uniform rules and definitions for the attribution of gross revenues of investors and affiliates for all auctionable services. Some

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<sup>494</sup> See, e.g., 47 C.F.R. § 24.711(b)(1).

<sup>495</sup> See "Comment Requested on 7 Percent Interest Rate Imposed on C Block Installment Payment Plan Notes," *Public Notice*, DA 97-1152 (rel. June 2, 1997) (in which the Bureau sought comment on several requests for of the interest rate assigned to PCS C block licensees conditionally granted on September 17, 1996).

of our service-specific competitive bidding rules require that, in determining whether an applicant meets certain size-based eligibility requirements, we consider, among other things, the gross revenues of certain investors in the applicant and the affiliates of attributable investors. These service-specific rules have established varying standards of attribution. For example, in both narrowband and broadband PCS, the gross revenues and total assets of an applicant, together with those of its affiliates and persons who hold an interest in the applicant or its affiliates, must be below a certain threshold in order for the applicant to qualify as a small business or entrepreneur.<sup>496</sup> However, in order to avoid counting the revenue of all of these entities, the rules for each service provide different exceptions whereby the applicants can create control groups.<sup>497</sup> For example, our broadband PCS rules provide two control group exceptions,<sup>498</sup> while our narrowband PCS rules provide only one control group exception.

184. In the 900 MHz SMR service, to determine whether an applicant qualifies as a small business, we attribute the revenues of parties holding partnership and other ownership interests and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of the applicant in conformance with the Commercial Mobile Radio Service (CMRS) spectrum cap attribution standard.<sup>499</sup> In contrast, under our MDS rules we attribute the gross revenues of the applicant and all of the applicant's affiliates (as defined in 47 C.F.R. § 1.2110(b)(4)).<sup>500</sup>

185. Discussion. In the *Notice*, we proposed to adopt a "controlling interest" standard, similar to that which we have recently adopted in our rules for LMDS,<sup>501</sup> as our general attribution rule for all future auctions. Under this standard, determination of eligibility for small business provisions would be made by attributing the gross revenues only of principals of the applicant who exercise both "*de jure*" and "*de facto*" control, and their affiliates. Nevertheless, we seek further comment on the controlling interest standard, and whether it is sufficient to calculate size so that only those entities truly meriting small business status qualify for bidding credits. We also ask commenters whether alternate standards for

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<sup>496</sup> The *total assets test* has been used only to determine entrepreneur status.

<sup>497</sup> See, e.g., 47 C.F.R. §§ 24.709(b)(3), (b)(5). A control group is an entity, or a group of individuals or entities, that possesses *de jure* and *de facto* control of an applicant or licensee.

<sup>498</sup> 47 C.F.R. §§ 24.709(b).

<sup>499</sup> 47 C.F.R. § 90.814(g). See 47 C.F.R. § 20.6 (CMRS Spectrum Cap).

<sup>500</sup> 47 C.F.R. § 21.961(b).

<sup>501</sup> See, e.g., *In the Matter of Implementation of Section 309(j) of the Communications Act - Competitive Bidding - Tenth Report and Order*, PP Docket No. 93-253 (rel. November 21, 1996) (IVDS); *LMDS Second Report and Order* at ¶ 352 (LMDS).

attributing the gross revenues of investors and affiliates in an applicant would better meet our goals. Commenters should specify what alternatives could be applied.

186. We note that our intent in proposing this standard is to provide flexibility that will enable legitimate small businesses to attract passive financing in a highly competitive and evolving telecommunications marketplace.<sup>502</sup> In the *Notice*, we preliminarily concluded that structuring our standard in this manner will not invite abuse. In this regard, we seek comment on whether this proposed standard would be strengthened by imposing a minimum equity requirement (e.g., 15 percent) that any person or entity identified as controlling must hold. Alternatively, we ask whether we should not adopt a minimum equity requirement, but rather indicate only that an absence of equity would raise a question as to whether *de facto* control exists.

187. We note that for purposes of calculating equity held in an applicant, we provide for full dilution of certain stock interests, warrants, *etc.*<sup>503</sup> Finally, we note that we require detailed reporting of all ownership interests as part of the general application requirement adopted in this *Third Report and Order*,<sup>504</sup> and under the proposed controlling interest standard would apply the comprehensive affiliation rule to all investors in an applicant. Thus, passive interests that were otherwise non-attributable would be attributed if they are affiliates under this rule. Finally, we note that the Commission reserves the right to conduct random audits of auction applicants and licensees in order to verify information provided regarding eligibility for small business provisions.<sup>505</sup> We seek comment on our proposed rule.<sup>506</sup>

## B. Payment Issues

### 1. Default Payments

188. Background. Section 1.2104(g) of our rules provides that where a winning bidder defaults on a license the bidder becomes subject to a default payment equal to the difference between the amount bid and the winning bid the next time the license is offered by the Commission (net or gross, whichever is less) plus an additional payment equal to three

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<sup>502</sup> We note, however, that in seeking comment regarding the auction of initial licenses for certain broadcast stations, the Commission has proposed stricter attribution standards and eligibility requirements for applicants seeking to qualify for minority-based provisions. See *Broadcast NPRM* at ¶ 18.

<sup>503</sup> See 47 C.F.R. § 24.709(b)(7).

<sup>504</sup> See Section III.C.3, *infra*.

<sup>505</sup> See Section III.C.5, *supra*.

<sup>506</sup> See Appendix E.

percent of the subsequent winning bid or the amount bid (net or gross, whichever is less).<sup>507</sup> In the past, where a bidder has defaulted on multiple licenses, this rule has been interpreted to require that the amount of the default payment be determined on a license-by-license basis, and then added together to determine the total default payment assessed.<sup>508</sup>

189. Discussion. We seek comment on whether we should modify Section 1.2104(g) to provide that where a winning bidder defaults on multiple licenses the default payment will be determined based upon the aggregate winning bid and the aggregate winning bid the next time the licenses are offered by the Commission. We recognize that assessing default payments through this method could significantly alter the amount of the default payment assessed under our rules. In this regard, we seek comment on whether this system could encourage insincere bidding and defaults since it could greatly reduce the effective penalty for a default. To the extent that a bidder is already intending to default on a license whose price at reauction is anticipated to exceed the initial bid price the effective penalty for defaulting on additional licenses would be limited to three percent of the subsequent winning bid or the amount bid, whichever is lower. Since the potential defaulter would not be facing the full harm caused by the default on the additional license, the incentive for insincere bidding and default could be too great. Indeed, this modification could encourage speculation by encouraging a high bidder on a relatively high valued license who anticipates default to purposely bid and default on a relatively low valued license in order to lessen the default payment assessed under our rules. Finally, we seek comment on whether such a modification could function without nullifying the provision in Section 1.2104(g) discussed above assessing an additional default payment equal to three percent of the subsequent winning bid or the amount bid, whichever is lower.<sup>509</sup>

### C. Administrative Filing Periods for Applications and Petitions to Deny

190. Background. Previously, the Commission has provided a 30-day period for filing of petitions to deny.<sup>510</sup> A 30-day petition to deny period will be used for the upcoming paging

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<sup>507</sup> See 47 C.F.R. § 1.2104(g)(2).

<sup>508</sup> See BDPCS, Inc., BTA Nos. B008, B036, B055, B089, B110, B133, B149, B261, B298, B331, B347, B358, B391, B395, B407, B413, and B447, *Order*, 11 FCC Rcd 14399 (WTB) (1996) (assessing a \$67,695,653.23 default payment for failure to submit the required down payment for 18 licenses won in the C block auction), *reconsideration denied*, *Order*, 12 FCC Rcd 6606 (WTB) (1997), *Application for Review Pending*.

<sup>509</sup> See 47 C.F.R. § 1.2104(g)(2).

<sup>510</sup> See 47 C.F.R. § 1.2108.

and LMDS auctions.<sup>511</sup> As discussed above (*see* Section III.A), in this *Third Report and Order* we amend Section 1.2108 of our rules to conform to the provisions in the Balanced Budget Act regarding the filing period for petitions to deny applications for initial licenses in auctionable services.<sup>512</sup> Specifically, notwithstanding Section 309(b) of the Communications Act,<sup>513</sup> Section 1.2108 as amended will provide that the Commission shall not grant a license less than seven days after public notice that long-form applications have been accepted for filing and that in all cases the period for filing petitions to deny shall be no shorter than five days.<sup>514</sup>

191. Discussion. Although we believe that in light of Congress' directive in the Balanced Budget Act a shortened petition to deny period is generally appropriate for future auctions, we seek comment on the appropriate length of a petition to deny period in light of this legislation. For example, we seek comment on whether there are instances in which the Commission should provide for a longer period than the minimums set forth in the statute for the filing of petitions to deny or for the grant of initial licenses in auctionable services (5 days and 7 days, respectively). In particular, we ask commenters to address whether auctions for specific services (*e.g.*, broadcast licenses) require longer periods for the filing of petitions to deny, and why this may be so.

#### **D. Competitive Bidding Rules and Procedures for the Auction of General Wireless Communications Services (GWCS) Licenses**

192. Background. On July 31, 1995, the Commission adopted the *Second Report and Order* in ET Docket No. 94-32 establishing auction and service rules for the General Wireless Communications Service (GWCS) in the 4660-4685 MHz band.<sup>515</sup> Subsequently, several parties filed petitions for reconsideration of the *Second Report and Order* that remain pending before the Commission.<sup>516</sup> The 1993 Omnibus Budget Reconciliation Act requires that 5

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<sup>511</sup> See 47 C.F.R. § 90.163(a)(4)(Paging); 47 C.F.R. § 101.43(a)(4)(LMDS).

<sup>512</sup> See 47 C.F.R. § 1.2108. See also, Balanced Budget Act, § 3008.

<sup>513</sup> 47 U.S.C. § 309(b).

<sup>514</sup> 47 C.F.R. §§ 1.2108(b), (c).

<sup>515</sup> See Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, ET Docket No. 94-32, Second Report and Order, 11 FCC Rcd 624 (1995) ("*GWCS Second Report and Order*").

<sup>516</sup> See Joint Petition for Reconsideration, Association of American Public Television Stations, *et. al* (April 6, 1995). See also, Petition for Reconsideration of Wireless Cable Association International (September 8, 1995); Petition for Clarification and Reconsideration of the Association for Maximum Service Television, Inc. (September 8, 1995).

MHz<sup>517</sup> of this spectrum be auctioned and licensed not later than August 9, 1998,<sup>518</sup> and to comply with this deadline, the Commission has announced an auction date for licenses in the GWCS as May 27, 1998.<sup>519</sup>

193. Discussion. We tentatively conclude that the Part 1 rules we adopt in the *Third Report and Order* should apply to the auction of GWCS spectrum and specifically supersede the previously-adopted GWCS rules setting forth auction rules and procedures.<sup>520</sup> In this regard, consistent with our decision in the *Third Report and Order*, we note that we would no longer offer installment payments as a means of financing small business participation in the GWCS auction, but instead would offer somewhat higher bidding credits. Employing Part 1 rules for the GWCS auction furthers our goal of simplifying and streamlining all competitive bidding rules and procedures for future auctions. In addition, by applying the Part 1 rules to the GWCS auction, we assure that GWCS auction participants, like participants in other future auctions, benefit from the experience we have gained in the 15 spectrum auctions we have conducted to date. We seek comment on this tentative conclusion.

194. In light of the statutory deadline for the auction and licensing of GWCS spectrum, we also tentatively conclude to use our discretion to truncate the petition to deny period for the grant of licenses in the GWCS auction. We believe that a shortened petition to deny period will assure issuance of the GWCS licenses by Congress' deadline. As discussed above (see Section IV.C), notwithstanding Section 309(d)(1) of the Communications Act, the Balanced Budget Act provides for shortened periods for the filing of petitions to deny and for the grant of licenses.<sup>521</sup> Under this provision, the Commission is permitted to grant any application for authorization assigned under competitive bidding not earlier than 7 days following public notice that an application has been accepted for filing, and may specify a period of not less than 5 days for filing petitions to deny.<sup>522</sup> We seek comment on this tentative conclusion.

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<sup>517</sup> We note that an additional five megahertz of this spectrum was auctioned as part of the spectrum offered in the WCS auction.

<sup>518</sup> See 47 U.S.C. § 309(j)(9). The auction for this service has been delayed pending resolution of potential interference with U.S. operations. See Defense Communications, "Federal Frequency Spectrum Sale Could Impair Military Operations," United States General Accounting Office Report to Congressional Committees, June, 1997, and letters included therein.

<sup>519</sup> See "FCC Announces Auction Schedule for the General Wireless Communications Service," *Public Notice*, DA 97-2634 (rel. December 17, 1997).

<sup>520</sup> See 47 C.F.R. §§ 26.1 *et seq.*

<sup>521</sup> Section 3008, Balanced Budget Act of 1997, P.L. 105-33, 111 Stat. 251 (1997).

<sup>522</sup> *Id.*



## V. CONCLUSION

195. Based on the experience we have gained from our 15 completed auctions, as well as the feedback we have received from bidders, we believe the time has come to streamline our competitive bidding rules in order to make our licensing process more efficient. In the past, we have adjusted our auction procedures for different services as we gained experience with the process, resulting in the adoption of different procedures for different auctionable services. This *Third Report and Order* amends Subpart Q of Part 1 of the Commission's rules<sup>523</sup> to reflect substantive amendments and modifications intended to simplify these regulations, supersede unnecessary rules wherever possible, and eliminate the need to conduct separate, comprehensive rule making proceedings prior to each auction. We believe that the rules we adopt today will benefit bidders and the auction process generally. We also believe these rules will help to provide more specific guidance and flexibility on a number of issues that will increase the overall effectiveness of our auctions. This *Second Further Notice of Proposed Rule Making* seeks comment on additional issues relating to our general competitive bidding rules for all auctionable services. We believe that these proposals will further enable us to achieve our goals of simplifying and streamlining our regulations in order to increase the overall efficiency of the competitive bidding process.

## VI. PROCEDURAL MATTERS AND ORDERING CLAUSES

### A. Regulatory Flexibility Act

196. The Final Regulatory Flexibility analysis, pursuant to the Regulatory Flexibility Act, 5 U.S.C. Section 604, is contained in Appendix B.

197. With respect to this Second Further Notice of Proposed Rulemaking, an Initial Regulatory Flexibility Analysis is contained in Appendix C. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the Initial Regulatory Flexibility Analysis. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis we ask a number of questions in our Initial Regulatory Flexibility Analysis regarding the prevalence of small businesses in the industry. Comments on the Initial Regulatory Flexibility Analysis must be filed in accordance with the same filing deadlines as comments on the Second Further Notice of Proposed Rulemaking, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Second Further Notice of Proposed Rulemaking, including the initial Regulatory Flexibility Analysis, to the Chief

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<sup>523</sup> 47 C.F.R. §§ 1.2101 *et seq.*

Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.* (1981).

#### **B. Ex Parte Presentations**

198. This *Second Further Notice of Proposed Rule Making* is a permit but disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in Commission rules. *See generally* 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

#### **C. Comments**

199. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before February 6, 1998, and reply comments on or before February 17, 1998. In addition, a courtesy copy should be delivered to Josh Roland and Ken Burnley, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M Street, Room 5202, Washington, DC 20554. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus ten copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

#### **D. Additional Information**

200. For further information concerning the *Third Report and Order and Second Further Notice of Proposed Rule Making*, contact Josh Roland or Mark Bollinger, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, DC 20554, (202) 418-0660.

#### **E. Ordering Clauses**

201. Accordingly, IT IS ORDERED THAT, pursuant to Sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 155(b), 155(c)(1), 303(r), and 309(j), this *Third Report and Order and Second Further Notice of Proposed Rule Making* is hereby ADOPTED, and Part 1, Subpart Q of the Commission's rules are amended as set forth in Appendix D, effective 60 days after publication in the *Federal Register*. The information collection contained in these rules

becomes effective 60 days after publication in the Federal Register, following OMB approval, unless a notice is published in the Federal Register stating otherwise.

202. IT IS FURTHER ORDERED THAT pursuant to 47 U.S.C. § 155(c) and 47 C.F.R. §§ 0.131(c) and 0.331, the Chief of the Wireless Telecommunications Bureau IS GRANTED DELEGATED AUTHORITY to prescribe and set forth procedures as set forth herein, including the authority to seek comment on and set forth mechanisms relating to the day-to-day conduct of specific auctions.

203. IT IS FURTHER ORDERED THAT the Secretary shall send a copy of this *Third Report and Order and Further Notice of Proposed Rule Making*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.*

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas  
Secretary

**APPENDIX A**  
**List of Parties**

**I. Comments in Response to the *Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making***

**Parties Filing Comments**

Airadigm Communications, Inc., Loli, Inc., New Wave Communications, Inc., KMC Interactive TV, Inc., MAR IVDS, Inc., New Wave PCS, Inc. and Euphemia Banas ("Airadigm")  
AirTouch Paging, Inc. ("AirTouch")  
Alarm Industry Communications Committee ("AICC")  
American Automobile Association ("AAA")  
American Mobile Telecommunications Association, Inc. (AMTA)  
AT&T Wireless Services, Inc. ("AT&T")  
Automated Credit Exchange ("ACE")  
Cellular Telecommunications Industry Association ("CTIA")  
Compu-DAWN, Inc. ("Compu-DAWN")  
Cook Inlet Region, Inc. ("CIRI")  
Coalition of Institutional Investors: Fleet Equity Partners, Media/Communications Partners, OneLiberty Ventures and Spectrum Equity Associates ("CII")  
Hughes Electronic Corporation ("Hughes")  
Interactive Video Data Trade Association ("ISTA")  
Merlin Telecom, Inc. ("Merlin")  
Metrocall, Inc. ("Metrocall")  
Motorola, Inc. ("Motorola")  
Mountain Solutions, Ltd. ("Mountain Solutions")  
National Telephone Cooperative Association ("NTCA")  
Nextel Communications, Inc. ("Nextel")  
Paging Network, Inc. ("PageNet")  
Personal Communications Industry Association ("PCIA")  
Pocket Communications, Inc. ("Pocket")  
Western Wireless Corporation ("WWC")

**Parties Filing Reply Comments**

Airadigm Communications, Inc., Loli, Inc., New Wave Communications, Inc., KMC Interactive TV, Inc., MAR IVDS, Inc., New Wave PCS, Inc., and Euphemia Banas ("Airadigm")  
AirTouch Paging, Inc. ("AirTouch")  
Alarm Industry Communications Committee ("AICC")  
American Automobile Association ("AAA")  
CellNet Data Systems, Inc. ("CellNet")  
Cook Inlet Region, Inc. ("CIRI")

Ericsson, Inc. ("Ericsson")  
U.S. Federal Trade Commission, Bureau of Consumer Protection ("FTC")  
General Wireless, Inc. ("GWI")  
Interactive Video Data Trade Association ("ISTA")  
IVDS Enterprises, Joint Venture ("IVDS Enterprises")  
Merlin Telecom, Inc. ("Merlin")  
Mountain Solutions, Ltd. ("Mountain Solutions")  
Narrowband PCS Companies ("NPCS")  
Nextel Communications, Inc. ("Nextel")  
NextWave Telecom, Inc. ("NextWave")  
Omnipoint Corporation ("Omnipoint")  
The Rural Telecommunications Group ("RTG")  
Western Wireless Corporation ("WWC")

**II. Comments in Response to the *Public Notice*, "Wireless Telecommunications Bureau Seeks Comment on Broadband PCS C and F Block Installment Payment Issues," WT Docket 97-82, DA 97-697 (rel. June 2, 1997)**

**Parties Filing Comments**

Airadigm Communications, Inc. (Airadigm)  
ALLTEL Communications, Inc. (ALLTEL)  
Alpine PCS, Inc. (Alpine)  
AmeriCall International, L.L.C. (AmeriCall)  
Bay Springs Telephone Company, Inc. (Bay Springs)  
Bear Stearns  
BellSouth Corporation  
BIA Capital Corporation (BIA Capital)  
Brookings Municipal Utilities (BMU)  
Central Wireless Partnership (CWP)  
Chase Telecommunications, Inc. (Chase)  
ClearComm, L.P.  
Comcast Corporation  
Community Service Communications, Inc. (CSCI)  
ComScape Telecommunications of Charleston License, Inc. (ComScape)  
Conestoga Wireless Company (Conestoga)  
CONXUS Communications, Inc. (CONXUS)  
Cook Inlet Region, Inc., Cook Inlet Western Wireless, PV/SS PCS, L.P., Western Wireless Corporation, AirGate Wireless, L.L.C., Aerial Communications, Inc., TeleCorp, Inc., and Airadigm Communications, Inc. (collectively, CIRI)  
Creative Airtime Services, L.L.C. (Creative)  
Cyber Sites, L.L.C.

Dewey Ballantine  
DiGiPH PCS, Inc. (DiGiPH)  
Duluth PCS, Inc., St. Joseph PCS, Inc., and West Virginia PCS, Inc. (collectively, Duluth PCS)  
Eldorado Communications, L.L.C. (Eldorado)  
Fortunet Communications, L.P. (Fortunet)  
General Wireless Inc. (GWI)  
Holland Wireless, L.L.C., Wireless 2000, Inc., and Northern Michigan PCS Consortium, (collectively, Holland)  
Horizon Personal Communications, Inc. (Horizon)  
Indus, Inc.  
Integrated Communications Group (Integrated)  
Kansas Personal Communications Services, Ltd. (KPCS)  
Ken W. Bray  
Magnacom Wireless, L.L.C., PCSouth, Inc., and Communications Venture PCS Limited Partnership (collectively, Magnacom)  
MCI Communications Corporation (MCI)  
Meretel Communications Limited Partnership (Meretel)  
MFRI, Inc.  
Morris Communications, Inc. (Morris)  
National Wireless Resellers Association (NWRA)  
National Association of Black-Owned Broadcasters, Inc. (NABOB)  
National Association of Black Telecommunications Professionals, Inc. (NABTP)  
National Telephone Cooperative Association (NTCA)  
Nextel Communications, Inc. (Nextel)  
NextWave Telecom, Inc. (NextWave)  
Northcoast Communications, L.L.C. (Northcoast)  
Official Committee of Unsecured Creditors of Pocket Communications, Inc. (Pocket Creditors)  
Omnipoint Corporation  
OneStop Wireless  
OnQue Communications, Inc. (OnQue)  
PCS Plus L.L.C. and McKenzie Telecommunications Group, Inc. (collectively, PCS Plus)  
Pioneer Telephone Association, Inc. (Pioneer)  
Pocket Communications, Inc. (Pocket)  
Point Enterprises, Inc. (Point)  
R&S PCS, Inc. (R&S)  
RFW, Inc.  
Rural Telephone Finance Corporation (RTFC)  
Small Business Coalition (SBC)  
SouthEast Telephone Limited Partnership, Ltd. (SouthEast Telephone)  
Southwestern Bell Mobile Systems (SBMS)  
SpectrumWatch  
Sprint Spectrum L.P.

Sprint Corporation  
Tennessee L.P. 121 (Tennessee)  
Toronto Dominion Bank and Toronto Dominion Securities (collectively, Toronto Dominion)  
Urban Communicators PCS Limited Partnership (Urban Comm)

**Parties Filing Reply Comments**

Airtel Communications, Inc. (Airtel)  
ALLTEL  
Alpine  
American Mobile Telecommunications Association, Inc. (AMTA)  
Antigone Communications Limited Partnership and PCS Devco, Inc. (collectively, Antigone/Devco)  
BellSouth Corporation  
Carlson Technologies, Inc. (Carlson)  
Cellexis International, Inc. (Cellexis)  
ClearComm, L.P.  
Comcast Corporation  
Conestoga  
CONXUS  
CIRI  
Duluth PCS  
Fortunet  
GWI  
GTE Service Corporation (GTE)  
Ken W. Bray  
MCI  
Millison Investment Management, Inc. (MIM)  
Mountain Solutions LTD, Inc. (Mountain Solutions)  
Nextel  
NextWave  
Northcoast  
Omnipoint Corporation  
OnQue  
PCS Wisconsin, LLC  
PrimeCo Personal Communications, L.P. (PrimeCo)  
Radiofone PCS, L.L.C. (Radiofone)  
R&S  
RTFC  
Sprint Spectrum L.P.  
Stan P. Doyle  
Telecommunications Resellers Association (TRA)

UniDial Communications (UniDial)  
Urban Comm  
U.S. Airwaves, Inc.  
Wireless Nation, Inc.

Parties Filing Ex Parte Comments

AirGate Wireless, July 18, 1997  
AirGate Wireless, July 22, 1997  
AirGate Wireless, September 9, 1997  
Alpine, September 17, 1997  
Alpine, September 23, 1997  
AmeriCall, July 11, 1997  
AmeriCall, August 5, 1997  
AmeriCall and Hughes Network Systems, Inc., September 16, 1997  
AmeriCall, ClearComm, and Chase, September 17, 1997  
BIA Capital, August 4, 1997  
Chase, August 11, 1997  
ClearComm, August 7, 1997  
Congressman Rick Boucher, July 25, 1997  
Congressman Richard Burr, August 11, 1997  
Congressman Thomas Davis, July 30, 1997  
Congressman John D. Dingell, September 16, 1997  
Congressman Steny H. Hoyer, August 7, 1997  
Congresswoman Sue W. Kelly, August 11, 1997  
Congressman W.J. "Billy" Tauzin, August 13, 1997  
Congressmen W.J. "Billy" Tauzin and Edward J. Markey, September 16, 1997  
CONXUS, August 27, 1997  
Cook Inlet Communications, August 5, 1997  
Cook Inlet Communications, August 15, 1997  
Cook Inlet Region, Inc., September 23, 1997  
El Dorado, August 13, 1997  
GWI, August 4, 1997  
GWI, August 15, 1997  
GWI, August 18, 1997  
Magnacom Wireless, LLC, August 13, 1997  
MCI, August 14, 1997  
NextWave, June 23, 1997  
NextWave, July 29, 1997  
NextWave, August 5, 1997  
Nokia, September 15, 1997  
Nokia, September 16, 1997  
Northern Michigan PCS Consortium, L.L.C., August 14, 1997  
Omnipoint Corporation, August 18, 1997.



Omnipoint Corporation, September 3, 1997  
Omnipoint Corporation, September 5, 1997  
Omnipoint Corporation, September 23, 1997  
R&S, August 11, 1997  
Senator Christopher S. Bond, July 14, 1997  
Senator Paul D. Coverdell, September 24, 1997  
Senator Pete V. Domenici, September 10, 1997  
Senators James M. Inhofe, Don Nickles, and Conrad Burns, August 7, 1997  
Senator John McCain, August 19, 1997  
Senator John McCain, September 18, 1997  
Senator Daniel Patrick Moynihan, August 4, 1997  
Triumph Capital, August 7, 1997  
Triumph Capital, September 23, 1997 ("McCarthy Letter")  
Urban Comm, August 21, 1997  
Urban Comm, September 17, 1997  
U.S. Small Business Administration, September 8, 1997 ("Glover Letter")

**III. Comments in Response to the Wireless Telecommunications Bureau's *Public Notice*, "Comment Requested on 7 Percent Interest Rate Imposed on C Block Installment Payment Plan Notes," DA 97-1152 (rel. June 2, 1997).**

Parties Filing Comments

Airadigm Communications, Inc. ("Airadigm")  
Comscape Telecommunications of Charleston License, Inc. ("ComScape")  
DiGiPH PCS, Inc. ("DiGiPH")  
Eldorado Communications, L.L.C., KMTel L.L.C., Mercury PCS L.L.C., and Miccom Associates ("Eldorado")  
Fortunet Communication, L.P. ("Fortunet")  
Indus, Inc. and Chase Telecommunications, Inc. ("Indus and ChaseTel")  
Integrated Communications Group Corporation ("Integrated")  
Kansas Personal Communication Services, Inc. ("KPCS")  
Vincent D. McBride ("McBride")  
Morris Communications, Inc. ("Morris")  
National Association of Black-Owned Broadcasters, Inc. ("NABOB")  
National Telephone Cooperative Association ("NTCA")  
NextWave Telecom, Inc. ("NextWave")  
Pinnacle Telecom, L.P. ("Pinnacle")  
Pioneer Telephone Association, Inc. ("Pioneer")  
Rural Telephone Finance Cooperative ("RTFC")  
September 17 Alliance ("Alliance")  
Sprint Spectrum, L.P. ("Sprint")

Urban Communicators PCS Limited Partnership ("Urban Comm")  
Quantum Communications Group, Inc. ("Quantum")  
Wireless 2000, Inc., Northern Michigan PCS Consortium, L.L.C., PCSouth, Inc., and  
Communications Venture PCS Limited Partnership ("Wireless 2000")

Parties Filing Reply Comments

Omnipoint Corporation ("Omnipoint")  
Savannah Independent PCS Corporation, Brookings Municipal Utilities, PVT Wireless  
Limited Partnership, PCS Plus, L.L.C., Southwestern Minnesota PCS Limited Partnership,  
Western Minnesota PCS Limited Partnership, North Dakota PCS Limited Partnership, and  
Horizon Personal Communications, Inc. ("Joint C block Applicants").

**APPENDIX B**  
**Final Regulatory Flexibility Analysis**  
*(Third Report and Order)*

As required by the Regulatory Flexibility Act (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking in WT Docket No. 97-82.<sup>2</sup> The Commission sought written public comment on the proposals in the Notice of Proposed Rulemaking, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) in this Third Report and Order (Order) conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Pub. L. No. 104-121, 110 Stat. 847 (1996).<sup>3</sup>

A. Need for, and objectives of, the Order in WT Docket No. 97-82.

This Order makes substantive amendments and modifications to the Commission's general competitive bidding rules for all auctionable services. These changes to the competitive bidding rules are intended to simplify the Commission's rules and regulations and eliminate unnecessary rules wherever possible, increase the efficiency of the competitive bidding process, and provide more specific guidance to auction participants while also giving them more flexibility.

B. Summary of significant issues raised by public comments in response to the IRFA

One party, Merlin Telecom, Inc. (Merlin), filed comments directly in response to the IRFA. Merlin raises six arguments: (1) Merlin urges the Commission not to impose additional reporting requirements or additional fees on applicants seeking installment payments.<sup>4</sup> In this Order, the Commission concludes that installment payments should not be offered in auctions as a means of financing small businesses and other designated entities seeking to secure spectrum licenses. The Commission eliminates installment payments in the auction of the lower 80 and General Category channels in the 800 MHz SMR service. The Commission notes that installment payments are not the only tool available to assist small

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<sup>1</sup> See 5 U.S.C. § 604. The RFA is codified at 5 U.S.C. § 601 *et seq.*

<sup>2</sup> Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Proceeding, WT Docket No. 97-82, *Order, Memorandum Opinion and Order, and Notice of Proposed Rulemaking*, 12 FCC Rcd 5686, 5749 (1997).

<sup>3</sup> Title II of CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>4</sup> Merlin Comments at 23.

businesses. Section 3007 of the Balanced Budget Act<sup>5</sup> requires that the Commission conduct certain future auctions in a manner that ensures that all proceeds from such bidding are deposited in the U.S. Treasury not later than September 30, 2002. The Commission seeks comment in the Further Notice on offering installment payments in the future; however, section 3007 of the Balanced Budget Act may require that these auctions be conducted without offering long-term installment payments. Thus, there probably will be no reporting requirements or fees for future installment payments.

(2) Merlin contends that including past affiliates in the proposed new definition of affiliate would require small businesses to keep more extensive records and would be unduly burdensome.<sup>6</sup> This Order adopts a uniform definition of "affiliate" for all future auctions. The term "affiliate" is defined in the Part 1 rules as an individual or entity that directly or indirectly controls or has the power to control the applicant; is directly or indirectly controlled by the applicant; is directly or indirectly controlled by a third person(s) that also controls or has the power to control the applicant; or has an "identity of interest" with the applicant.<sup>7</sup> The Commission concludes that this definition has helped to ensure that businesses seeking small business status are truly small. In addition, the Commission finds that this definition is consistent with the decision to adopt a controlling interest threshold for purposes of attribution of gross revenues of investors and affiliates of an applicant.

(3) Merlin argues that the Commission's proposal to lower the financial caps which permit small businesses to take advantage of special benefits would limit the number of small businesses eligible for benefits and thus increase the barriers to entry that small businesses face.<sup>8</sup> This Order adopts the proposal in the Notice to continue to define small businesses based on the characteristics and capital requirements of a specific service, in order to reduce the barriers to entry faced by small businesses.

(4) Merlin argues that the Commission's proposals to reduce bidding credits, raise the interest rate on installment payments, raise down payments, and eliminate installment payments will have a negative effect on the ability of small businesses to compete effectively in the telecommunications industry.<sup>9</sup> In this Order, the Commission concludes that installment payments should not be offered in auctions as a means of financing small businesses and other designated entities seeking to secure spectrum licenses. In the Further

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<sup>5</sup> Balanced Budget Act of 1997, P.L. 105-33, 111 Stat. 251 (1997), to be codified in relevant part at 47 U.S.C. § 309(j)(2)(E) and 309(j)(4)(F) ("Balanced Budget Act").

<sup>6</sup> Merlin Comments at 24.

<sup>7</sup> 47 C.F.R. §§ 1.2110(b)(4), 24.839(d).

<sup>8</sup> Merlin Comments at 24.

<sup>9</sup> *Id.*

Notice, the Commission seeks comment on offering installment payments in the future; however, section 3007 of the Balanced Budget Act may require that these auctions be conducted without offering long-term installment payments. In light of the decision to suspend installment payment financing for the near future, the Commission determined that higher bidding credits would better fulfill the mandate of Section 309(j)(4)(D) of the Communications Act to provide small businesses the opportunity to participate in spectrum-based services. Therefore, the Commission adopts bidding credits of 35 percent for designated entities with average gross revenues not to exceed \$3 million, 25 percent for designated entities with average gross revenues not to exceed \$15 million, and 15 percent for designated entities with average gross revenues not to exceed \$40 million. With respect to down payments, the Commission adopts the proposal in the Notice to delegate to the Bureau the discretion to determine the down payment amount on a service-by-service basis. The Commission believes that a substantial down payment is required to ensure that licensees have the financial capability to attract the capital necessary to deploy and operate their systems and to protect against default.

(5) Merlin argues that the proposal to require auction winners to pay their second down payment regardless of a pending petition to deny would increase the defaults by small businesses.<sup>10</sup> In this Order, the Commission is suspending the use of installment payments as a means of financing small business participation in the auction program for the immediate future. As a result, all auction winners, including small businesses, will be required to submit the full payment owed on their winning bids shortly after the license is ready to be granted. The Commission notes that in the Balanced Budget Act Congress granted the Commission authority to shorten the petition to deny period, and as a result, to grant licenses much more rapidly. Sections 1.2108(b) and (c) of the rules are amended to provide that the Commission shall not grant a license less than seven days after public notice that long-form applications have been accepted for filing. In addition, the Commission amends this section to provide that in all cases the period for filing petitions to deny shall be no shorter than five days. Applications that are the subject of petitions to deny will ordinarily take longer to resolve than uncontested applications, these changes in procedure will reduce the risk of frivolous petitions being filed solely for the purpose of delay and will enhance the Commission's ability to resolve petitions expeditiously. The Commission declines to require all winning bidders to make their full payments at the same time regardless of whether petitions to deny their applications have been filed.

(6) Finally, Merlin contends that the Commission should not adopt a cross-default rule.<sup>11</sup> In this Order, the Commission concludes that it will not pursue a policy of cross-default (either within or across services) where licensees default on an installment payment. The Commission is eliminating the use of installment payments as a means of financing small

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<sup>10</sup> *Id.* at 25.

<sup>11</sup> *Id.* at 26.

business participation in the auction program for the foreseeable future. Therefore, in practice this decision will apply only to existing licensees who are currently paying for their licenses in installments.

C. Description and estimate of the number of small entities to which rules will apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our rules.<sup>12</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>13</sup> A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>14</sup> Nationwide, there are 275,801 small organizations.<sup>15</sup> "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."<sup>16</sup> As of 1992, there were 85,006 such jurisdictions in the United States.<sup>17</sup>

In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act.<sup>18</sup> Under the Small Business Act, a "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).<sup>19</sup>

The rules adopted in this Order will allow all entities, including existing cellular, PCS, paging, and other small communications entities to obtain licenses in auctionable services through competitive bidding. These rules generally apply to future auctions, but, with limited exceptions, will not apply to the initial auctions of licenses in the paging, 220 MHz,

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<sup>12</sup> 5 U.S.C. §§ 603(b)(3), 604(a)(3).

<sup>13</sup> 5 U.S.C. § 601(6).

<sup>14</sup> 5 U.S.C. § 601(4).

<sup>15</sup> 1992 Economic Census, U.S. Bureau of the Census, Table 6, (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

<sup>16</sup> 5 U.S.C. § 601(5).

<sup>17</sup> U.S. Department of Commerce, Bureau of the Census, "1992 Census of Governments."

<sup>18</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632).

<sup>19</sup> 15 U.S.C. § 632.

800 MHz Specialized Mobile Radio (SMR), and Local Multipoint Distribution (LMDS) services. In estimating the number of small entities who may participate in future auctions of wireless services, we anticipate that current wireless services licensees are representative of future auction participants. The following is our estimate of the number of small entities who are current wireless licensees:

1. Estimates for cellular licensees

The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.<sup>20</sup> The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 500 or more employees.<sup>21</sup> The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.<sup>22</sup> Therefore, even if all 12 of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. We assume, for purposes of our evaluations and conclusions in this FRFA, that all of the current cellular licensees are small entities, as that term is defined by the SBA. In addition, we note that there are 1,758 cellular licenses; however, we do not know the number of cellular licensees, since a cellular licensee may own several licenses. The most reliable source of information regarding the number of cellular service providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS). The report places cellular licensees and Personal Communications Service (PCS) licensees in one group. According to the data released in November, 1997, there are 804 companies reporting that they engage in cellular or PCS service.<sup>23</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to

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<sup>20</sup> 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

<sup>21</sup> U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, (radiotelephone communications industry data adopted by the SBA Office of Advocacy) (SIC Code 4812).

<sup>22</sup> U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995).

<sup>23</sup> FCC, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Figure 2 (Number of Carriers Paying Into the TRS Fund by Type of Carrier) (Nov. 1997).

estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 804 small cellular service carriers.

## 2. Estimates for broadband and narrowband PCS licensees

**Broadband PCS.** The broadband PCS spectrum is divided into six frequency blocks designated A through F. The Commission has defined "small entity" in the auctions for Blocks C and F as a firm that had average gross revenues of less than \$40 million in the three previous calendar years.<sup>24</sup> This definition of "small entity" in the context of broadband PCS auctions has been approved by the SBA.<sup>25</sup> The Commission has auctioned broadband PCS licenses in Blocks A through F. Of the qualified bidders in the C and F block auctions, all were entrepreneurs -- defined for these auctions as entities together with affiliates, having gross revenues of less than \$125 million and total assets of less than \$500 million at the time the FCC Form 175 application was filed. Ninety bidders, including C block reauction winners, won 493 C block licenses and 88 bidders won 491 F block licenses. For purposes of this FRFA, the Commission assumes that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees, are small entities.

**Narrowband PCS.** The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded in the auctions. Given that nearly all radiotelephone companies have no more than 1,500 employees, and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, the Commission assumes, for purposes of this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

## 3. Estimates for 220 MHz radio services

Since the Commission has not yet defined a small business with respect to 220 MHz radio services, it will utilize the SBA definition applicable to radiotelephone companies -- an entity employing no more than 1,500 persons. With respect to the 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) for Economic Area (EA) licensees, a firm with average annual gross revenues of not

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<sup>24</sup> See 47 C.F.R. § 24.720(b)(1).

<sup>25</sup> See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581-84 (1994).



more than \$6 million for the preceding three years; and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than \$15 million for the preceding three years. Since this definition has not yet been approved by the SBA, the Commission will utilize the SBA definition applicable to radiotelephone companies. Given that nearly all radiotelephone companies employ no more than 1,500 employees, the Commission will consider the approximately 3,800 incumbent licensees as small businesses under the SBA definition.

#### 4. Common Carrier Paging

The Commission has proposed a two-tier definition of small businesses in the context of auctioning geographic area paging licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$15 million. Since the SBA has not yet approved this definition for paging services, the Commission will utilize the SBA definition applicable to radiotelephone companies -- an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to *Telecommunications Industry Revenue* data, there were 172 "paging and other mobile" carriers reporting that they engage in these services.<sup>26</sup> Consequently, we estimate that there are fewer than 172 small paging carriers. The Commission estimates that the majority of private and common carrier paging providers would qualify as small businesses under the SBA definition.

#### 5. Air-Ground radiotelephone service

The Commission has not adopted a definition of small business specific to the Air-Ground radiotelephone service.<sup>27</sup> Accordingly, the Commission will use the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground radiotelephone service, and we estimate that almost all of them qualify as small under the SBA definition.

#### 6. Specialized Mobile Radio licensees

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<sup>26</sup> FCC, *Telecommunications Industry Revenue: TRS Fund Worksheet Data*, Figure 2 (Number of Carriers Paying Into the TRS Fund by Type of Carrier) (Nov. 1997).

<sup>27</sup> Air-Ground radiotelephone service is defined in Section 22.99 of the Commission's Rules. 47 C.F.R. § 22.99.